**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.2836 OF 2005.**

Sham Narayan Dube & ors. ..Petitioner

versus

Sukhram R. Yadav & Ors. ..Respondents

Mr.A.M.Saraogi for the Petitioner

None for the Respondent

**Coram : S.R.Sathe, J.**
**Dated : 23rd Jan, 2006**

P.C.

1. Heard learned Advocate for the petitioner. None appears on behalf of the respondent.

2. The petitioners filed application for filing written statement. The same was rejected by the trial court on the ground that the copy of the plaint was served on the petitioners, the original defendants long back, but they did not file the written statement for a period of about nine months. It appears that the contention of the defendants was that they were not served with the Writ of Summons. According to the learned Advocate for the petitioners, the vakalatnama was filed for the purpose of Chamber Summons and not for the suit and as the Writ of Summons was not served on the

defendants/petitioners, the written statement was not filed. From the submissions made before me it appears that the Writ of Summons was not actually served leaving aside the question as to whether under the circumstances of the case it was necessary to serve the same. It appears that there was no harm in allowing the defendant to file the written statement at that time. The learned Advocate for the petitioners submit that the written statement is ready and he will file the same within a week. It must be noted that admittedly on the day when the application of the present petitioner was rejected the matter was not ready for hearing and on that day the same was in fact adjourned for framing of issues and notice of motion. So, considering all these facts the petition is allowed. The order passed by the learned trial judge is set aside and the petitioners are directed to file their written statement on or before 30.01.2006. The trial court to proceed with the suit thereafter.

(S.R.Sathe, J.)